IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.8054 OF 2005

Jitendra S/o.Bhaskar Tayade
and Ors. .. Applicants
Versus
State of Maharashtra .. Respondent

Mr.G.V.Bhagat for applicant
Mrs.S.D.Shinde, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 21st December 2005.

P.C.

. Applicants are apprehending arrest in connection with a complaint filed by complainant Mahadev Tayade. He alleges that applicants are guilty of offences punishable under sections 363, 356 and 34 I.P.C. Learned Sessions Judge has rejected application preferred by the applicants herein only on the ground that the learned Magistrate has examined complainant and his

witness on oath and when such examination is made he has to commit case to the court of sessions. In the opinion of the learned Judge, learned J.M.F.C. has not passed any order committing the matter to sessions and directing applicants to remain present before the said Court. In this view of the matter, their application was rejected by him as not maintainable.

2. Learned Additional Sessions Judge lost sight of the fact that the Code of Criminal Procedure contemplates direction for grant of bail to person apprehending arrest. Where any person has reason to believe that he may be arrested for having committed non bailable offence, then he can apply to High Court or Court of Sessions for direction under section 438(1). In the present case, the offences alleged are under section 363 i.e. kidnapping and under section 366. It is the latter offence under section 366 which is clearly non bailable. In

this view of the matter, the learned Sessions Judge was in error in rejecting application as not maintainable.

3. Present application is allowed to be withdrawn with liberty to apply to Sessions Court afresh for anticipatory bail. Ad-interim order granted by this Court to continue for a period of 10 days from today to enable applicants to approach sessions court.

4. Sessions Judge to decide the said application on merits and in accordance with law, after hearing applicants as well as prosecution, uninfluenced by the order passed earlier. All contentions are kept open.

(S.C.DHARMADHIKARI, J)